

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 1999-510-C - ORDER NO. 2000-0395
APRIL 26, 2000

IN RE: Application of essential.com, inc. for a) ORDER GRANTING
Certificate of Public Convenience and) CERTIFICATE TO
Necessity to Provide Resold Local and) PROVIDE LOCAL AND
Interexchange Telecommunications) INTEREXCHANGE
Services throughout the State of South) TELECOMMUNICATIONS
Carolina.) SERVICES

This matter comes before the Public Service Commission of South Carolina (the Commission) by way of the Application of essential.com, inc. ("Essential"¹ or the "Company") for authority to provide resold local exchange and interexchange telecommunications services throughout the State of South Carolina. The application was filed pursuant to S.C. Code Ann. Sections 58-9-280 and 58-9-520 (Supp. 1999), and the Rules and Regulations of the Commission.

By letter, the Commission's Executive Director instructed Essential to publish, one time, a prepared Notice of Filing in newspapers of general circulation in the areas affected by the Application. The purpose of the Notice of Filing was to inform interested parties of the manner and time in which to file the appropriate pleadings for participation in the proceedings. Essential complied with this instruction and provided the Commission

¹ The Commission recognizes that the spelling of the Company's name uses a lower case "e." However, for purpose of this Order and to direct attention to the name of the Company, the Commission will use an upper case "E" in this Order.

with proof of publication of the Notice of Filing. A Petition to Intervene was received from the South Carolina Telephone Coalition ("SCTC").

On March 15, 2000, counsel for the SCTC filed with the Commission a Stipulation in which Essential stipulated that it would seek authority in non-rural local exchange ("LEC") service areas of South Carolina and that it would not provide any local service to any customer located in a rural incumbent's service area, unless and until Essential provided written notice of its intent prior to the date of the intended service. Essential also stipulated that it was not asking the Commission to make a finding at this time regarding whether competition is in the public interest for rural areas. Essential agreed to abide by all State and Federal laws and to participate to the extent that it may be required to do so by the Commission in support of universally available telephone service at affordable rates. The SCTC withdrew its opposition to the granting of a statewide Certificate of Public Convenience and Necessity to Essential provided the conditions contained in the Stipulation are met. The Stipulation is approved and attached as Order Exhibit 1.

A hearing was commenced on March 29, 2000, at 11:00 a.m. in the Commission's Hearing Room. The Honorable Philip T. Bradley, Chairman, presided. Essential was not represented by counsel. Florence P. Belser, Staff Counsel, represented the Commission Staff.

Christopher H. Kallaher, Vice President and General Counsel of Essential, appeared and testified in support of the application. According to Mr. Kallaher, Essential is the Internet's first Energy & Communications Superstore. Essential provides an on-line

electronic commerce marketplace that enables customers to shop for and purchase a wide range of branded “essential” services. These services currently include local and long distance telecommunications, Internet access, electricity, and home heating oil. Essential intends to offer other services as they become available, including natural gas, wireless telecommunications, cable television, and home security. The instant application only involves Essential’s request to provide local and interexchange telecommunications services in South Carolina.

Mr. Kallaher explained that Essential’s target markets are residential and small business customers. Essential hopes to provide its customers with one convenient, consolidated on-line bill, and the ability for customers to review a variety of aspects of their service use. According to Mr. Kallaher, Essential’s highly scaleable on-line marketplace offers simplicity and convenience for all segments of their target markets.

Essential is a corporation organized under the laws of the State of Delaware and has received a Certificate of Authorization from the South Carolina Secretary of State. Essential’s principal office is located in Burlington, Massachusetts.

Essential has obtained authorization to provide local exchange and interexchange services in 15 states and is moving into the BellSouth operating region. Mr. Kallaher testified that Essential will obtain service from certified carriers such as BellSouth for local services and MCIWorldCom and Sprint for long distance services. Essential will use direct marketing methods to market its services and has no plans to use telemarketing in South Carolina at this time.

Mr. Kallaher described Essential's management team as having extensive experience in telecommunications as well as customer service and Internet commerce. Akhil Garland, CEO of Essential has managed Management and Information Systems for the Commonwealth of Massachusetts and an international health care company, in addition to founding and later selling a multimedia company. Basil Pallone, Treasurer and Director of Finance/Controller, was Executive Vice President for EUA Cogenex Corporation, an energy management company, and was CFO of Energy Vision, a start up retail marketer of energy and energy services. John Duffy, Essential's Vice President, Business Development – Telecommunications Markets, has management experience in the telecommunications industry. Mr. Duffy served as a Vice President for Metromedia International Communications, managing 13 joint ventures across Europe and Asia, and prior to working with Metromedia held several senior management positions for Metrocall, Inc., including Director of Carrier Relations. Essential's Director of Web Development, Libby Curtis, has experience managing a sixteen-person web development group for Cendent Corporation.

Regarding Essential's technical resources, Mr. Kallaher stated that Essential would be using the physical network and technology of its underlying carriers. The primary technical capabilities required of Essential relate to customer care and billing and service, as well as the interface with the ILEC and the long distance wholesale providers. Essential's technology enables service providers to rapidly implement an e-commerce strategy through our on-line marketplace, including on-line billing and provisioning. Mr. Kallaher offered that the capability to implement Essential's strategy is present in all

aspects of their management team. According to Mr. Kallaher, Essential has one of the leading innovators in eCommerce technology in Ivar Wold. Mr. Wold is Essential's Chief Technology Officer and was a Senior Vice President at Fidelity Investments in Boston where he was responsible for the architecture and development of Fidelity's retail online products. Mr. Wold has over 30 years of technology and engineering experience.

With regard to Essential's financial resources, Mr. Kallaher stated that Essential has attracted over 12 million dollars in equity since March 1999, and has attracted premiere financial sponsors including Bessemer Venture Partners, Brand Equity Ventures, and EnerTech Capital Partners, MindSpring Enterprises, Inc., Cyberian Outpost, Inc., Furniture.com, and Office Max. As of December 1, 1999, Essential had a 4 million dollar unused line of credit with Comdisco and has over 5.5 million dollars of liquid funds available. Essential also recently announced a third round of financing totaling 75 million dollars in a private placement offering. A review of the financial information filed with the application indicates a very liquid Company as of September 30, 1999, with a healthy current ratio and no long term debt.

Mr. Kallaher described Essential's billing and customer service functions. Upon certification from this Commission, Mr. Kallaher warranted that Essential will abide by all the Rules and Regulations of the South Carolina Public Service Commission. Mr. Kallaher affirmed that Essential would participate in support of universally available telephone service at affordable rates and that Essential would provide services which meet the applicable service standards of the Commission. Further, Mr. Kallaher testified that the provision of local service by Essential would neither adversely impact the public

interest nor would Essential's service adversely impact the availability of affordable local exchange service. Mr. Kallaher offered that approval of Essential's application is in the public interest as increased competition positively affects the public interest because it forces competitors to be more efficient, offers customers more choice, helps keep consumer prices down, and leads to improved customer service.

After full consideration of the applicable law, the Company's Application, and the evidence presented at the hearing, the Commission hereby issues its findings of fact and conclusions of law:

FINDINGS OF FACT

1. Essential is organized as a corporation under the laws of the State of Delaware and is authorized to do business as a foreign corporation in the State of South Carolina by the Secretary of State.
2. Essential is a provider of local exchange telecommunications services and interexchange telecommunications services, and Essential wishes to provide its services in South Carolina.
3. The Commission finds, based upon the evidence presented at the hearing, that Essential has the managerial, technical, and financial resources to provide the services as described in its Application. S.C. Code Ann. Section 58-9-280 (B)(1) (Supp. 1999).
4. The Commission finds that Essential's "provision of service will not adversely impact the availability of affordable local exchange service." S.C. Code Ann. Section 58-9-280 (B)(3) (Supp. 1999).

5. The Commission finds that Essential will support universally available telephone service at affordable rates. S.C. Code Ann. Section 58-9-280 (B)(4) (Supp. 1999).

6. The Commission finds that Essential will provide services which will meet the service standards of the Commission. S.C. Code Ann. Section 58-9-280 (B)(2) (Supp. 1999).

7. The Commission finds that the provision of local exchange service by Essential “does not otherwise adversely impact the public interest.” S.C. Code Ann. Section 58-9-280 (B)(5) (Supp. 1999).

CONCLUSIONS OF LAW

1. Based on the above findings of fact, the Commission determines that a Certificate of Public Convenience and Necessity should be granted to Essential to provide competitive intrastate local exchange service in South Carolina. The terms of the Stipulation between Essential and SCTC are approved and adopted as a part of this Order. Any proposal to provide service to rural service areas is subject to the terms of the Stipulation. In addition, Essential is granted authority to provide intrastate interLATA interexchange service and to originate and terminate toll traffic within the same LATA, as set forth herein, through the resale of intrastate Wide Area Telecommunications Services (WATS), Message Telecommunications Service (MTS), directory assistance, travel card service or any other services authorized for resale by tariffs of carriers approved by the Commission.

2. Essential shall only charge those rates and charges approved it is tariffs on file with the Commission, as provided in S.C. Code Ann Section 58-9-230 (Supp. 1999).

3. Essential shall file, prior to offering local exchange telecommunications services in South Carolina, its final tariff of its local service offerings conforming to all matters discussed with Staff and comporting with South Carolina law in all matters.

4. Any proposed change in rates for local telecommunications services must be made in compliance with S.C. Code Ann. Section 58-9-520 (Supp. 1999) and 58-9-540 (Supp. 1999).

5. With regard to the long distance service offerings of Essential, the Commission adopts a rate design which includes only maximum rate levels for each tariff charge. A rate structure incorporating maximum rate levels has been previously adopted by the Commission. In Re: Application of GTE Sprint Communications Corporation, etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984).

Essential shall not adjust its long distance rates below the approved maximum level without notice to the Commission and to the public. Essential shall file its proposed rate changes, publish its notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. However, the public notice requirement is waived, and therefore not required, for reductions below the maximum cap in instances which do not affect the general body of subscribers or do not constitute a general rate reduction. In Re: Application of GTE Sprint Communications, etc., Order No. 93-638, issued in Docket No. 84-10-C (July 16, 1993). Any proposed increase in the maximum rate level for long distance services reflected in the tariff which

would be applicable to the general body of the Company's subscribers shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provisions of S.C. Code Ann. §58-9-540 (Supp. 1999).

6. If it has not already done so by the date of issuance of this Order, Essential shall file its revised maximum long distance tariff and an accompanying price list within thirty (30) days of receipt of this Order. The revised tariff shall be consistent with the findings of this Order and shall be consistent with the Commission's Rules and Regulations.

7. Essential is subject to access charges pursuant to Commission Order No. 86-584 in which the Commission determined that for access purposes resellers should be treated similarly to facilities-based interexchange carriers.

8. With regard to the Company's resale of interexchange service, an end-user should be able to access another interexchange carrier or operator service provider if the end-user so desires.

9. Essential shall resell the services of only those interexchange carriers or LECs authorized to do business in South Carolina by this Commission. If Essential changes underlying carriers, it shall notify the Commission in writing.

10. With regard to the origination and termination of toll calls within the same LATA, Essential shall comply with the terms of Order No. 93-462, Order Approving Stipulation and Agreement, in Docket Nos. 92-182-C, 92-183-C, and 92-200-C (June 3, 1993), with the exception of the 10-XXX intraLATA dialing requirement, which has been rendered obsolete by the toll dial parity rules established by the Federal

Communications Commission, pursuant to the Telecommunications Act of 1996 (See, 47 CFR 51.209).

11. Essential shall file surveillance reports on a calendar or fiscal year basis with the Commission as required by Order No. 88-178 in Docket No. 87-483-C. The proper form for these reports is indicated on Attachment A. Further, Essential shall file such other annual financial information as the Commission requires of competitive local exchange companies. This information includes annual reports and gross receipts reports. As the surveillance report, indicated on Attachment A, and the annual report and the gross receipt report necessitate the filing of intrastate information, Essential shall keep such financial records on an intrastate basis as needed to comply with these reporting requirements.

12. The Company shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests and repairs. In addition, the Company shall provide to the Commission in writing the name of the authorized representative to be contacted in connection with general management duties as well as emergencies which occur during non-office hours.

Essential shall file the names, addresses and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. Attachment B shall be utilized for the provision of this information to the Commission. Further, the Company shall promptly notify the Commission in writing if the

representatives are replaced, and the Company is directed to comply with the Commission regulations unless waived by the Commission.

13. Essential shall conduct its business in compliance with Commission decisions and Orders, both past and future, including but not limited to, any and all Commission decisions which may be rendered in Docket No. 96-018-C regarding local competition.

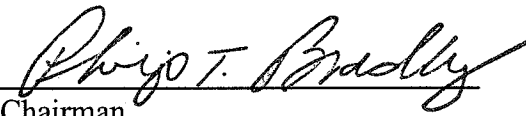
14. Essential requested waivers from certain Commission regulations and requirements. Specifically, Essential requested waivers from (1) the requirement found in Rule 103-631 to publish and distribute local exchange directories, (2) the requirement contained in Rule 103-610 that all records be kept within the State of South Carolina, (3) any requirement that Essential maintain its books and records under the Uniform System of Accounts (“USOA”), and (4) any reporting requirement such as found in Reg. 103-618, which although applicable to incumbent LECS, are not applicable to competitive providers. The Commission grants the request for waiver from the requirement to publish directories as Essential has indicated that it will contract with the incumbent local exchange company to include the customers of Essential in the directory listing of the ILEC directory. Further, the Commission grants the request for a waiver from the requirement contained in Rule 103-610 that all records be kept within the State of South Carolina as Essential has indicated that its principal place of business is located in Burlington, Massachusetts. Furthermore, Essential has indicated that it will make its records available for inspection upon request by the Commission. The Commission grants Essential’s request that it be allowed to maintain its books and records using

Generally Accepted Accounting Principles (“GAAP”), rather than USOA. However, the Commission denies Essential’s request that it be exempt from reporting requirements. Essential shall make reporting requirements as required of all CLECs operating in South Carolina. Essential is directed to comply with all Commission regulations, unless a regulation is specifically waived by the Commission.

15. Title 23, Chapter 47, South Carolina Code of Laws Ann., governs the establishment and implementation of a “Public Safety Communications Center,” which is more commonly known as a “911 system” or “911 service.” Services available through a 911 system include law enforcement, fire, and emergency medical services. In recognition of the necessity of quality 911 services being provided to the citizens of South Carolina, the Commission hereby instructs Essential to contact the appropriate authorities regarding 911 service in the counties and cities where the Company will be operating. Contact with the appropriate authorities is to be made before beginning telephone service in South Carolina. Accompanying this Order is an information packet from the South Carolina Chapter of the National Emergency Number Association (“SC NENA”) with contact information and sample forms. The Company may also obtain information by contacting the E911 Coordinator at the Office of Information Resources of the South Carolina Budget and Control Board. By this Order and prior to providing services within South Carolina, Essential shall contact the 911 Coordinator in each county, as well as the 911 Coordinator in each city where the city has its own 911 system, and shall provide information regarding the Company’s operations as required by the 911 system.

16. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director

(SEAL)

ANNUAL INFORMATION ON SOUTH CAROLINA OPERATIONS
FOR INTEREXCHANGE COMPANIES AND AOS'

COMPANY NAME FEIN

ADDRESS PHONE NUMBER

CITY, STATE, ZIP CODE FAX NUMBER

1. SOUTH CAROLINA OPERATING REVENUES FOR THE 12 MONTHS ENDING
DECEMBER 31, OR FISCAL YEAR. \$ _____
2. SOUTH CAROLINA OPERATING EXPENSES FOR THE 12 MONTHS ENDING
DECEMBER 31, OR FISCAL YEAR. \$ _____
3. RATE BASE INVESTMENT IN SOUTH CAROLINA OPERATIONS FOR THE 12 MONTHS
ENDING DECEMBER 31, OR FISCAL YEAR. \$ _____
4. PARENT'S CAPITAL STRUCTURE FOR THE 12 MONTHS ENDING
DECEMBER 31, OR FISCAL YEAR. \$ _____
5. PARENT'S EMBEDDED COST PERCENTAGE (%) FOR LONG TERM DEBT AND EMBEDDED
COST PERCENTAGE (%) _____
6. ALL DETAILS ON THE ALLOCATION METHOD USED TO DETERMINE THE AMOUNT OF
EXPENSES ALLOCATED TO SOUTH CAROLINA OPERATIONS AS WELL AS METHOD OF
ALLOCATION OF COMPANY'S RATE BASE INVESTMENT (SEE #3 ABOVE).
7. **CONTACT PERSON FOR ALL FINANCIAL INQUIRIES AND REPORTING:**

NAME _____

ADDRESS (IF DIFFERENT FROM COMPANY) _____

TELEPHONE NUMBER _____

SIGNATURE

NAME PLEASE PRINT OR TYPE

TITLE

April 26, 2000

ATTACHMENT B

AUTHORIZED UTILITY REPRESENTATIVE INFORMATION

PURSUANT TO SOUTH CAROLINA PUBLIC SERVICE COMMISSION REGULATION

103-612.2.4(b) - Each utility shall file and maintain with the Commission the name, title, address, and telephone number of the persons who should be contacted in connection with General Management Duties, Customer Relations (Complaints), Engineering Operations, Test and Repairs, and Emergencies during non-office hours.

Company Name (Including dba Name(s) or Acronyms used or to be used in South Carolina)

Business Address

City, State, Zip Code

A.

General Manager Representative (Please Print or Type)

Telephone Number / Facsimile Number / E-mail Address

B.

Customer Relations (Complaints) Representative (Please Print or Type)

Telephone Number / Facsimile Number / E-mail Address

C.

Engineering Operations Representative (Please Print or Type)

Telephone Number / Facsimile Number / E-mail Address

D.

Test and Repair Representative (Please Print or Type)

Telephone Number / Facsimile Number / E-mail Address

E.

Contact for Emergencies During Non-Office Hours (Please Print or Type)

Telephone Number / Facsimile Number / E-mail Address

F.

Financial Representative (Please Print or Type)

Telephone Number / Facsimile Number / E-mail Address

G.

Customer Contact Telephone Number for Company (Toll Free)

This form was completed by

Signature

**If you have any questions, contact the Consumer Services Department (803-896-5230)
or Utilities Department at (803-896-5105).**

DOCKET NO. 1999-510-C - ORDER NO. 2000-0395
APRIL 26, 2000
EXHIBIT #1

BEFORE
THE PUBLIC SERVICE COMMISSION
OF
SOUTH CAROLINA

Docket No. 1999-510-C

Re: Application of essential.com, inc. for a)
Certificate of Public Convenience and)
Necessity to Provide Local Exchange)
and Interexchange Telecommunications)
Services in the State of South Carolina)
_____)

STIPULATION

The South Carolina Telephone Coalition ("SCTC") (see attachment "A" for list of companies) and essential.com, inc. ("essential.com") hereby enter into the following stipulations.

As a consequence of these stipulations and conditions, SCTC does not oppose essential.com's Application. SCTC and essential.com stipulate and agree as follows:

1. SCTC does not oppose the granting of a statewide Certificate of Public Convenience and Necessity to essential.com, provided the South Carolina Public Service Commission ("Commission") makes the necessary findings to justify granting of such a certificate, and provided the conditions contained within this stipulation are met.

2. Essential.com stipulates and agrees that any Certificate which may be granted will authorize essential.com to provide service only to customers located in non-rural local exchange company ("LEC") service areas of South Carolina, except as provided herein.

3. Essential.com stipulates that it is not asking the Commission to make a finding at this time regarding whether competition is in the public interest for rural areas.

4. Essential.com stipulates and agrees that it will not provide any local service, by its own facilities or otherwise, to any customer located in a rural incumbent LEC's service area, unless

and until essential.com provides such rural incumbent LEC and the Commission with written notice of its intent to do so at least thirty (30) days prior to the date of the intended service. During such notice period, the rural incumbent LEC will have the opportunity to petition the Commission to exercise all rights afforded it under Federal and State law. Also, essential.com acknowledges that the Commission may suspend the intended date for service in rural LEC territory for ninety (90) days while the Commission conducts any proceeding incident to the Petition or upon the Commission's own Motion, provided that the Commission can further suspend the implementation date upon showing of good cause.

5. Essential.com stipulates and agrees that if essential.com gives notice that it intends to serve a customer located in a rural incumbent LEC's service area, the Commission receives a Petition from the rural incumbent LEC to exercise its rights under Federal or State law, or the Commission institutes a proceeding of its own, then essential.com will not provide service to any customer located within the service area in question without prior and further Commission approval.

6. Essential.com acknowledges that any right which it may have or acquire to serve a rural telephone company service area in South Carolina is subject to the conditions contained herein, and to any future policies, procedures, and guidelines relevant to such proposed service which the Commission may implement, so long as such policies, procedures, and guidelines do not conflict with Federal or State law.

7. The parties stipulate and agree that all rights under Federal and State law are reserved to the rural incumbent LECs, and this Stipulation in no way suspends or adversely affects such rights, including any exemptions, suspensions, or modifications to which they may be entitled.

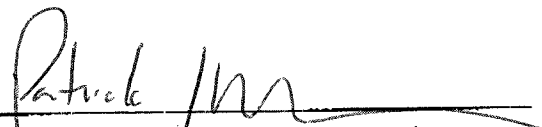
8. Essential.com agrees to abide by all State and Federal laws and to participate, to the extent it may be required to do so by the Commission, in the support of universally available

telephone service at affordable rates.

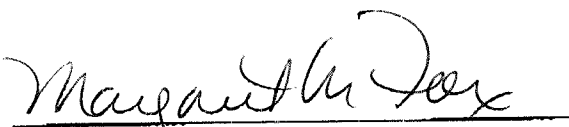
9. Essential.com hereby amends its application and its prefiled testimony in this docket to the extent necessary to conform with this Stipulation.

AGREED AND STIPULATED to this 14th day of March, 2000.

essential.com, inc.:


Secretary, Essential.com
PATRICK J. MORAN

South Carolina Telephone Coalition:


M. John Bowen, Jr.
Margaret M. Fox
McNAIR LAW FIRM, P.A.
Post Office Box 11390
(803) 799-9800

Attorneys for the South Carolina Telephone
Coalition

ATTACHMENT A**South Carolina Telephone Coalition Member Companies
for Purposes of Local Service Stipulation**

ALLTEL South Carolina, Inc.
Bluffton Telephone Company, Inc.
Chesnee Telephone Company
Chester Telephone Company
Farmers Telephone Cooperative, Inc.
Ft. Mill Telephone Company
Hargray Telephone Company, Inc.
Heath Springs Telephone Company Inc.
Home Telephone Company, Inc.
Lancaster Telephone Company
Lockhart Telephone Company
McClellanville Telephone Company
Norway Telephone Company
Palmetto Rural Telephone Cooperative, Inc.
Piedmont Rural Telephone Cooperative, Inc.
Pond Branch Telephone Company
Ridgeway Telephone Company
Rock Hill Telephone Company
Sandhill Telephone Cooperative, Inc.
St. Stephen Telephone Company
West Carolina Rural Telephone Cooperative, Inc.
Williston Telephone Company

BEFORE
THE PUBLIC SERVICE COMMISSION
OF
SOUTH CAROLINA

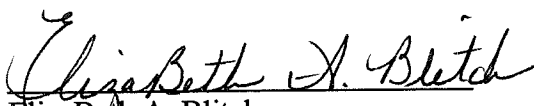
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of South Carolina)
_____)

**CERTIFICATE OF
SERVICE**

I, ElizaBeth A. Blich, do hereby certify that I have this date served one (1) copy of the foregoing Stipulation upon the following party of record by causing said copy to be deposited with the United States Mail, first class postage prepaid to:

Edward E. Madden, Jr., Esquire
Rich, May, Bilodeau & Flaherty, P.C.
176 Federal Street
Boston, Massachusetts 02110.


ElizaBeth A. Blich
McNAIR LAW FIRM, P.A.
Post Office Box 11390
Columbia, South Carolina 29211
(803) 799-9800

March 15, 2000

Columbia, South Carolina